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MEHSERLE, F. GUANSON, K. SMITH, D.
HORNER, R. HANEY and DOES 1-25,
inclusive.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH CARRETHERS

Plaintiff,

v.

BAY AREA RAPID TRANSIT, J.
MEHSERLE, F. GUANZON, K. SMITH, D.
HORNER, R. HANEY and DOES 1-25,
inclusive.

Defendants.

Case No.: CV 09 1101 MHP

**STIPULATION AND [PROPOSED] ORDER
TO CONTINUE DEADLINES PRIOR TO
TRIAL**

Trial: **March 22, 2010**

Judge: **Hon. Marilyn H. Patel**

INTRODUCTION

The parties have been meeting and conferring to attempt to conduct discovery in this matter, starting with the deposition of defendant J. Mehserle, as discussed during the case management conference on 6/15/09. But defendants' counsel objected to producing Mr. Mehserle for deposition, asserting his 5th Amendment rights. Under the operative case management conference order dated 6/19/09, the deadline to complete non-expert discovery is 11/10/09. Despite counsels' best efforts, the parties have been unable to complete their discovery to prepare for trial by this date. They respectfully present this stipulation and proposed order requesting the court permit a brief continuance of the pre-trial dates as follows.

FACTUAL HISTORY

At the case management conference on 6/15/09, the parties discussed with the court the discovery they intended to do, particularly prior to a settlement conference, which was to occur prior to 10/31/09. During the summer months, plaintiff's counsel attempted on many occasions to set defendant J. Mehserle's deposition but defendants' counsel refused to produce him due to Mr. Mehserle's criminal lawyer's unavailability and assertion of his 5th Amendment rights. As the court recommended, and standing order instructs, the plaintiff's counsel left numerous telephone messages for this court seeking a telephone conference prior to participating in a settlement conference before the Honorable Maria Elena-James. Thereafter, plaintiff's counsel continued to leave telephone messages for the court, defendants' counsel filed a letter request, and the plaintiff also submitted a letter request.

After the parties could not settle the case during the settlement conference, plaintiff's counsel set other depositions and engaged in follow-up discovery to attempt to prepare for trial and comply with the previously set deadlines without the deposition of the individual defendant and witness: J. Mehserle. Counsel met and conferred and agreed to present this joint stipulation to request a brief extension of deadlines for pretrial deadlines in late October 2009. Then on November 9, 2009, during the first deposition in this case, the court ordered a conference on November 23, 2009 to address outstanding discovery issues. But the current case management order sets deadlines prior to the 23rd that the parties cannot meet despite their good-faith efforts.

The court has currently set a trial date of March 22, 2010 with a final pretrial conference on March 2, 2010. The plaintiff wishes to keep his trial date. The defendants will be seeking a continuation of the trial date over the plaintiff's objection. The parties jointly agree and formally request the court extend the previous deadlines ordered in this case as follows.

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STIPULATION

The court's case management order sets forth deadlines in section G7 on page 9. The parties jointly request be continued briefly given the March 22 trial date as set forth below.

- a. **Disclosure of identities of all witnesses to be called in each party's case-in-chief:**
February 26, 2010 instead of February 2, 2010 for both parties,
- b. **Completion of all discovery except from experts (see Civ. L.R. 26-5):** December 20, 2009 instead of November 10, 2009,
- c. **Disclosure of identities, resumes, final reports and all other matters required by Fed. R. Civ. P. 26(a)(2):** January 8, 2010 instead of November 24, 2009
- d. **Supplemental disclosures:** January 22, 2010 instead of December 8, 2009.
- e. **Completion of discovery from experts (see Civ. L.R. 26-5):** February 19, 2010 instead of January 23, 2010.

Respectfully submitted.

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1 The court finds that counsel have presented diligent efforts to comply with the court's
2 orders and recommendations, and good-faith reasons to extend the deadlines in this matter prior
3 to trial. The court's case management order filed on 6/19/09 is hereby amended to adopt the
4 parties suggestions for new deadlines. The court adopts these as the Case Management Order in
5 this action in accordance with Civ. L.R. 16 and other applicable Local Rules, and shall govern all
6 further proceedings in this action.

7 IT IS SO ORDERED.

8 Date: 11/17/09



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